



Department of Energy
Washington, DC 20585

March 10, 2005

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DATE	MAR 10 2005
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Mr. Michael E. Boyd, President
Californians for Renewable Energy, Inc.
5439 Soquel Drive
Soquel, CA 95073

Re: Californians for Renewable Energy, Inc., et al v.
California Independent System Operator, Inc.

DOE Complaint No. 03-003-HQ

Dear Mr. Boyd:

This is in response to your letter of February 22, 2005, whereby you seek clarification of the Department of Energy's Letter of Finding in the above-referenced complaint. In your letter, you contend that the Department of Energy overlooked evidence that would have supported the complaint. You also claim that the California Energy Commission, the City and County of San Francisco and Pacific Gas and Electric Company were named in the complaint as respondents but that they were not included as respondents in the Letter of Finding. We will review the issues you have raised and respond to them once we complete our analysis.

By copy of this letter, the California Energy Commission, the City and County of San Francisco and Pacific Gas and Electric Company (hereinafter co-respondents) are hereby notified of your concerns. The co-respondents are further notified that if they wish to submit a statement or brief addressing the issues raised, they must do so within forty-five (45) days of their receipt of a copy of this letter.

Sincerely,

Poli A. Marmolejos
Director
Office of Civil Rights and Diversity

cc: Lynne Brown, Vice President
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cc w/enclosures:

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Department of Energy
Washington, DC 20585

January 7, 2005

LETTER OF FINDING

CERTIFIED

Mr. Michael E. Boyd, President
Californians for Renewable Energy
5439 Soquel Drive
Soquel, CA 95073

Re: Californians for Renewable Energy, et al v. California
Independent System Operator

DOE Complaints number: 03-001-HQ; 03-002-HQ;
03-003-HQ¹

Dear Mr. Boyd:

This is to notify you of the finding of the Department of Energy, Office of Civil Rights and Diversity, on the above-referenced complaints. The finding is final and is not subject to appeal.

BACKGROUND

The complainants are residents of the Bayview Hunters Point community, a neighborhood of San Francisco, California, and various advocacy groups.² They are listed in the complaints as follows:

Lynne Brown; Keith Tisdell; Sharon Green-Peace; Caroline Washington; Bayview Hunters Point Community Advocates (represented by Karen Pierce, President); Californians for Renewable Energy, Inc. (represented by Michael Boyd, President); Community First Coalition (represented by Maurice Campbell, Executive Director); From the Ground Up (represented by Don Paul, President); Greenaction for Health and Environmental Justice (represented by Bradley Angel, Executive Director); Huntersview Tenants Association (represented by Tessie Ester, President);

¹The complaints were filed by organizations and individuals who are interested in the environmental well-being of the Bayview Hunters Point Community. The complaints are identical, except with respect to the remedies sought. Accordingly, they are combined for decision.

²Hereinafter, the complainants in all three complaints will be grouped together and referred to as complainants.



Executive Director); Huntersview Tenants Association (represented by Tessie Ester, President); Women's Energy Matters (represented by Barbara George, Executive Director).

The respondent, the California Independent System Operator Corporation, is referred to by the complainant as CAL ISO. For purposes of this decision, the respondent will be referred to as CAISO.

CAISO is a nonprofit public benefit corporation whose function is to ensure efficient use and reliable operation of electrical transmission facilities. However, CAISO does not own or operate any power plant, transmission line or any other transmission facility. It controls the flow of electricity in California to ensure that reliability needs are met, and develops policies and plans to ensure that California's existing and future transmission system will satisfy national, state and local reliability standards.

The complainants filed two complaints on June 11, 2003, pursuant to Title VI of the 1964 Civil Rights Act, 42 U.S.C. Section 2010d (Title VI), and the Department of Energy's implementing regulations, at 10 C.F.R. § 1040. The complainants are concerned that the continued operation of an old power plant, the Hunters Point Power Plant, and the possibility of establishing future power plants in, or in proximity to, the Bayview Hunters Point community will have a deleterious effect on the health of residents. Specifically, the complainants contend that CAISO, in collaboration with the Grid Planning Department, an agency of the State of California, and transmission owners approved and implemented the San Francisco Bay Area Generation Outage Standard (the Grid Standard). The complainants state in one of their complaints that, based on this standard, CAISO has authorized the continued operation of *the inefficient and polluting PG & E (Pacific Gas and Electric) Hunters Point Power Plant, advocated the siting of new generators, permitted the construction of new transmission projects, and allowed the implementation of operation measures to make up for purported insufficiencies in system reliability.* They contend that by adopting and authorizing these actions through the use of improper grid standards, CAISO exposes low income residents and people of color who live in the Bayview Hunters Point Community to dangerous emissions of harmful pollutants.

The complainants point out that the population of the Bayview Hunters Point Community is approximately 30,000, of whom 92% are minorities. They claim that nearly 40% of the residents have annual incomes below \$15,000 and that the unemployment rate is 13%. Accordingly, they claim that CAISO's actions detrimentally and disproportionately impact the health and well-being of low income residents and people of color in San Francisco's Bayview Hunters Point neighborhood, in violation of Title VI of the 1964 Civil Rights Act. Therefore, the complainant's are requesting that the Department, pursuant to its implementing regulations, assure that CAISO comply with the provisions of Title VI and take affirmative steps to remedy the effects of the alleged discrimination.

The complainants allege that discrimination against low-income people of color in the San Francisco Bayview Hunters Point area is longstanding. They claim that as long as the outdated

PG & E Hunters Point Power Plant remains open, it threatens the health and well-being of nearby residents such as the complainants.

Specifically, the complainants request that the Department take the following actions:

1. Promptly investigate the complaints;
2. Require that as a condition of continuing to provide Federal financial assistance or benefits to CAISO, CAISO immediately discontinue the use of the Greater Bay Area Generation Outage Standard and adopt reasonable and nondiscriminatory grid reliability standards;
3. Require that all CAISO planning based on the Greater Bay Area Generation Outage Standard be corrected to reflect reasonable and nondiscriminatory grid reliability standards;
4. Require that CAISO provide timely notification to regulators, stakeholders and community members of changes in grid reliability standards and their impact on CAISO planning;
5. Require that CAISO include present and projected energy savings from energy conservation and renewable energy programs in San Francisco in any of their projections for future energy demand for the city of San Francisco;
6. Require that CAISO authorize the immediate shutdown of the entire PG & E Hunters Point Power Plant by 2004;
7. Require that proposed combustion turbine units not be sited in Bayview Hunters Point;
8. Require that CAISO not promote or authorize the siting of Potrero Unit 7;
9. Require that CAISO authorize the phasing out of Potrero Unit 3;
10. Require that CAISO give full public notice of, and allow public review and public participation in, all of its decisions;
11. Allow complainants to conduct discovery in furtherance of proving their allegations;
12. Notify each complainant of all actions the Department of Energy takes in furtherance of investigating the allegations.

On June 21, 2003, Californians for Renewable Energy (CARE) filed a request with the Federal Energy Regulatory Commission (FERC) seeking to have a hearing before FERC to address the issue of the denial of voting rights to the Hunters Point Bayview community. However, on August 4, 2003, FERC denied the request on the grounds that it lacked authority to address the issues of racial and economic discrimination outlined in the request. FERC pointed out in its *Order Rejecting Request for Hearing* that its legal authority over the composition of CAISO's governing board is derived from the Federal Power Act, and since the purpose of the Act is economic regulation of entrepreneurs engaged in resource developments and not to rectify racial and socioeconomic discrimination, FERC could not rely on racial discrimination as a basis for changing the CAISO's governing board.

Following the decision by the FERC, CARE and Lynne Brown, a Bayview Hunters Point resident, filed a third complaint (complaint number 03-003-HQ) in which they ask to be removed from the earlier, two complaints. In this new complaint, they seek additional remedies: (1) that the Department of Energy require CAISO to reorganize its governance structure; (2) that the Department of Energy require CAISO and PG & E to rework their energy efficiency pilot program to focus the benefits of the program on the residents and businesses in Bayview Hunters Point and other areas of Southeast San Francisco served by the Hunters Point Power Plant; and (3) *a fair opportunity to vote for representation that understands Environmental Justice issues that affect this low-income community of color*. The complainants also request that in the absence of an equitable resolution, the Federal Energy Regulatory Commission hold a compliance hearing on the matter as soon as practicable.³ Some forty Bayview Hunters Point residents added their names to this complaint.

In response to the complaint, CAISO argues that Title VI has no application to the complaints and, further, that the complaints are untimely and, therefore, the Department has no jurisdiction to accept them. However, CAISO seeks to address the complaints on their merits, should the Department conclude that it has jurisdiction over the matters alleged. In this regard, CAISO offers to establish that the complaints are without merit and that the requested relief, *i.e.*, closure of the Hunters Point Power Plant, cannot be granted against CAISO since CAISO does not own the Plant. Moreover, CAISO argues, the continuing operation of the Plant is subject to *the Reliability Must-Run criteria for the San Francisco/Greater Bay Area under current circumstances of power demand, resource availability and transmission configuration* - meaning that the Plant is necessary to maintain the balance of the electricity grid in the area.

ANALYSIS AND FINDING

Before accepting a complaint for investigation and further processing under Title VI, the Department must first determine whether the complaint meets all procedural requirements for

³The complainants appear to be under the impression that the Department has authority to order the FERC to hold a compliance hearing. However, the Department does not have such authority.

acceptance. Thus, the Department must determine whether the complaint is timely filed and, if so, whether it is cognizable under Title VI.

Timeliness

The Department has promulgated regulations for implementing Title VI. These regulations, at 10 C.F.R. § 1040.104(b), provide that no complaint will be investigated if it is received by an appropriate Departmental official more than 180 days after the alleged discrimination, unless the Department extends the time for good cause shown. CAISO asserts that the source of the complaints is the Grid Standard it adopted in February 2002, more than a year before the complaints were filed, and well outside the 180-day time frame for filing. CAISO also claims that its Board of Governors has been working with interested stakeholders to educate them about the Grid Standard and to assist them toward the goal of closing the Hunters Point Power Plant for more than a year prior to the date of the complaints. In this connection, CAISO states that on July 28, 2002, several community organizations invited CAISO on a tour of the area around the Hunters Point Plant and the surrounding Bayview community. Following the tour, the Community Energy Plan Coalition (the Coalition) submitted to CAISO their Community Energy Plan Mix (the Community Plan) and since then, CAISO began working with interested community stakeholder working groups, including the complainants, to review the Community Plan and to identify the “combinations of generation and transmission additions [that] might be sufficient to allow for the closure of the Hunters Point Power Plant.” Therefore, CAISO argues, the complainants had knowledge of the Grid Standard and the decision to retrofit and maintain the old Hunters Point Power Plant more than 180 days prior to the date of filing the complaints. Thus, CAISO urges the Department not to investigate the complaints because they were untimely filed, and there is no good reason for extending the filing dated beyond the regulatory time frame.

In response to CAISO’s argument as set forth in its brief, Marie Harrison of Green Energy Environmental Justice Community (Green Energy⁴), on behalf of other complainants (including Keith Tisdell, Sharon Green-Peace, Caroline Washington, Bayview Hunters Point Community Advocates, Community First Coalition, From the Ground Up, Marie Harrison of Green Energy (or Greenaction) counters that community representatives were first informed of CAISO’s use of the Grid Standard on April 10, 2003. Harrison states that it was in an April 21, 2003, teleconference that Greenaction and other community action groups (Greenaction, Community First Coalition, Women’s Energy Matters) learned about the discriminatory nature of the Grid Standard. According to Harrison, prior to that date, CAISO had not notified or communicated with community stakeholders about the Grid Standard, had not invited participation in its grid standard committee, and had not consulted with the community or allowed public attendance or comment at the February 7, 2002, CAISO Board of Governors’ meeting where the standard was adopted. Harrison said that prior to April 25, 2002, CAISO meetings were closed to the public, and so community stakeholders never had an opportunity to be informed about Grid Standard or

⁴Green Energy appears to be an affiliate of Greenaction for Health & Environmental Justice (Greenaction). Its response is on Greenaction’s letterhead.

to comment on its impact on the community. The record contains the affidavit of a Bayview Hunters Point resident who declared that he had no knowledge that the Grid Standard had been adopted.

We find from the evidence that although the complainants were aware that CAISO was in the process of developing a grid planning standard, they may not have been aware that a standard was in fact developed and adopted until April 10, 2003. CAISO claims that since the adoption of the standard, it has had ongoing discussions with the complainants on the Community Plan, and in July 2002, it took Bayview Hunters Point residents, which presumably included the complainants, on a tour of the Hunters Point Power Plant. Even so, we do not find any tangible evidence that the complainants were informed that the Grid Standard was adopted. Although it is probable that the various advocacy groups may have been aware of the adoption of the Grid Standard prior to April 10, 2003, there is no direct and tangible evidence in the record that they were actually aware of its adoption. In view of this, and because individual residents who joined in the complaints were even less likely to become aware of the adoption of the standard, it is the decision of the Department to treat the complaints as timely filed.

We now turn to the issue of whether Title VI has any application to the complaints. Title VI provides that, *[N]o person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.* 42 U.S.C. § 2000d. The Department has promulgated regulations implementing this provision of Title VI. These regulations, at 10 C.F.R. § 1040.3(o), define federal financial assistance as follows:

(1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail for provision of services by Federal personnel, (4) the sale and lease of, and the permission to use (on other than casual or transient basis) Federal property or any interest in such property, the furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

The complainants contend that CAISO is a recipient of Federal financial assistance because (1) it receives significant concessions from the FERC in the form of the right to operate as a public utility; (2) it receives an interest-free loan of 1.3 million dollars from Western Area Power Administration (WAPA), a Department facility; (3) it benefits directly from energy systems integration research conducted by the Department through the California Energy Commission's ongoing Public Interest Energy Research Program (PIER)⁵. We will analyze each of the

⁵PIER transfers software and technology for the Consortium for Electricity Reliability Technology Solutions (CERTS) to CAISO for use in operating the grid (see discussion on page 7).

complainant's arguments *seriatim*.

(1) CAISO Receives Significant Concessions from FERC.

CAISO argues that the right it receives from the FERC to operate a public utility does not constitute Federal financial assistance within the meaning of Title VI. Citing San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange, 97 FERC ¶ 61, 236 (2001), CAISO points out that entities regulated by the FERC are not subject to Title VI merely by virtue of their regulated status. We agree. Additionally, we find, as also argued by CAISO (citing Herman v. United Board of Carpenters, 60 F.3d 1375, 1382 (9th Cir. 1995)), that Federal regulation is not the equivalent of Federal financial assistance. The Department notes that it is well established that the fact that an entity operates under the constraint of Federal statutes does not establish standing by a plaintiff to bring a Title VI claim against the entity. See, e.g., Gottfried v. F.C.C., 655 F.2d 297, 312-13 (D.C. Cir. 1981).⁶

(2) CAISO Receives an Interest-free Loan of \$1.3 from WAPA.

CAISO categorically denies that it has received a loan from WAPA or any other agency or facility of the Department. The record contains a statement signed by Terry M. Winter, President and Chief Executive Officer of CAISO, entitled *CERTIFICATION OF NON-RECEIPT OF FEDERAL FUNDS*. The statement is addressed to the Congress of the United States, Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, and is dated March 31, 2003. In the

⁶The plaintiff, Sue Gottfried, is hearing impaired. On behalf of herself and others similarly situated, she filed a petition with the Federal Communications Commission (FCC) to deny the license renewal applications of eight Los Angeles television stations. She argued that the stations, as recipients of valuable Federal licenses, failed to satisfy obligations imposed on them by Section 504 of the Rehabilitation Act of 1973. The FCC denied the petition, stating, among other things, that Section 504 of the Rehabilitation Act did not apply to commercial licensees.

The plaintiff appealed the FCC's decision to the United States Court of Appeal, District of Columbia Circuit, urging the Court to find that a broadcast license is itself a valuable commodity constituting "financial assistance" as that term is used in the Rehabilitation Act. However, the Court held that broadcast licenses issued to commercial television broadcasting does not constitute financial assistance. In reaching its decision, the Court noted that Section 504 of the Rehabilitation Act was "expressly" modeled on Section 601 of Title VI of the 1964 Civil Rights Act and "there is ample evidence to conclude that Congress did not intend Title VI to reach the recipients of licenses from the FCC." Therefore, the Court affirmed the FCC's decision denying the plaintiff's petition.

statement, Winter makes the following averment: *Pursuant to the requirements of House Rule XI.I, I certify that neither I nor the entity that I am representing . . . has received any federal grant (or subgrant thereof) or contract (or subcontract thereof) during the current fiscal year or either of the two previous fiscal years.* (Emphasis original).

We have reviewed the records of the Department and find no evidence that CAISO was the recipient of a loan from the Department during the period in question. WAPA has provided a statement to the Department that it made no loan nor advanced any funding to CAISO between FY 2002 and FY 2004. Accordingly, it is our finding that the complainants' allegation herein is not substantiated by the evidence presented.

(3) CAISO Benefits Directly from Energy Systems Integration Research Conducted by the Department through the California Energy Commission's ongoing PIER Program.

The PIER program transfers software and technology developed by the Department for the Consortium for Electric Reliability Technology Solutions (CERTS) to CAISO for use in operations. CERTS was established as a partnership among universities, the private sector, and national laboratories operated by the Department. It is supported by funding from the Department and the California Energy Commission's PIER program. CERTS works with electric industry organizations such as CAISO to research, develop and disseminate new methods, tools and technologies to protect and enhance the reliability of the national electric power system. CAISO points out that CERTS' efforts are not focused on the unique needs a single industry participant may have but, rather, its work is intended to address the needs of the national electric industry as a whole.

CERTS receives Federal financial assistance from the Department and therefore it is subject to Title VI jurisdiction. The Federal funds that CERTS receives are distributed to national laboratories owned by the Department and to participating universities. However, CAISO is not a recipient of any such funds, although it participates in CERTS' activities and is a beneficiary of the CERTS program.

A memorandum of understanding (MOU) between CERTS and CAISO provides that CAISO will serve on CERTS' Advisory Board; assist in establishing the reliability research program, its goals and objectives; and assist in setting priorities of CERTS' reliability research projects. The MOU further provides that CAISO will have access to reliability research conducted by CERTS and will participate in tests, development and demonstration projects aimed at enhancing grid reliability. As result of this agreement, CAISO's CEO, Terry Winter, serves as a member of CERTS Industry Advisory Board and CAISO contributes funds and labor to CERTS. As a participant with CERTS, CAISO is used to demonstrate prototypes of software developed in conjunction with CERTS' research on tools for management of grid reliability. However, as CAISO points out, it could not implement the software without entering into a license agreement or user support services agreement with the Electric Power Group, a for-profit, limited liability company that

offer consulting services to the electric industry.

From the facts here presented, the Department finds that CAISO is a beneficiary of the federally funded CERTS program, along with other entities in the electric industry. The issue then is whether, based upon its receipt of benefits under the CERTS program, CAISO meets the definition of a recipient of Federal financial assistance, thereby according jurisdiction to the Department to conduct a Title VI investigation of its activities.

We find from all the available evidence that CAISO is not a recipient of Federal financial assistance. As noted, CAISO merely benefits from information and technologies which CERTS is able to develop with Federal financial assistance from the Department. As CAISO correctly points out, citing U.S. Dep't of Transportation v. Paralyzed Veterans of America, 477 U.S. 606 (1986), and other relevant cases, CAISO's relationship with CERTS does not confer any financial assistance on CAISO.

The complainants argue that Paralyzed Veterans of America is a Section 504 case and, therefore, has no relevance to the issue under consideration. We disagree. In Paralyzed Veterans of America, the United States Supreme Court held that entities that benefit only economically from Federal financial assistance are not recipients within the meaning of Title VI. This is exactly the issue before us in these complaints. The fact that Paralyzed Veterans was brought under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) is not relevant. Moreover, courts have routinely applied case law interpreting the meaning of *Federal Financial Assistance* within the Rehabilitation Act to Title VI cases, and vice versa. See, e.g., Gottfried, *supra*. See also Jarno v. Lewis, 256 F. Supp. 2d 499 (E.D. Va. 2003)

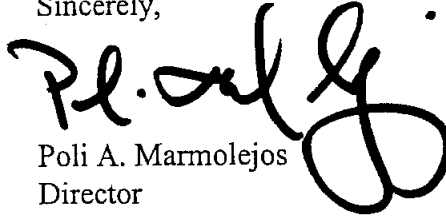
CONCLUSION

On the basis of the evidence in the record, and for the reasons herein stated, the Department finds that it is not a provider of Federal financial assistance to CAISO, either directly, through WAPA, or through any other departmental entity. Therefore, the Department does not have Title VI jurisdiction to accept and investigate any of the complaints. Accordingly, the Department has no authority to grant any of the remedies sought by the complainants.

NOTICE OF RIGHTS

There is no right of appeal from the Department's finding in a Title VI complaint. However, the complainants may file a civil action in an appropriate Federal or state court. The complainants may be foreclosed from filing a civil action if they fail to file within the limitations period applied by the court in the jurisdiction in which the action is filed. If the complainants decide to file a civil action, they are advised to seek the services of an attorney. This notice is not a guarantee that a civil action on the matters herein alleged will be accepted by any court.

Sincerely,



Poli A. Marmolejos
Director
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Re: CALifornians for Renewable Energy
Inc., (CARE) *et al* v. California
Independent System Operator, Inc *et*
al DOE Complaint No. 03-003-HQ

Dear Mr. Marmolejos,

Thank you for your January 7, 2005 response to our June 21, 2003 Complaint with findings that included.

- ♦ We find from the evidence that although the complainants were aware that CAISO was in the process of developing a grid planning standard, they may not have been aware that a standard was in fact developed and adopted until April 10, 2003.¹
- ♦ From the facts here presented, the Department finding that CAISO is a beneficiary of the federally funded CERTS program, along with other entities in the electric industry.²

The purpose of this letter is not to second guess your decision, but to point out that you might have overlooked information and you may have failed to consider that regarding the California Independent System Operator Corporation's legal status as a non-profit entity under Federal Tax Codes, and that our Complaint included not just the CAISO but the California Energy Commission (CEC) the City and County of San Francisco (CCSF) and Pacific Gas and Electric Corporation (PG&E).

Although we are not like your-self, a lawyer, we do have knowledge as regards to the responsibilities of the officers and directors of a non-profit tax exempt corporation of which my organization CALifornians for Renewable Energy, Inc. (CARE) is recognized

¹ January 7th, 2005 response to CARE's June 21st, 2003 complaint at paragraph 1 page 6.

² January 7th, 2005 response to CARE's June 21st, 2003 complaint at paragraph 1 page 9.

under Section 501(c)(3) of the Internal Revenue Code. As such we understand that in 1983 the Fourth Circuit Court of Appeals held that "In No. 81-1, petitioner Goldsboro Christian Schools maintains a racially discriminatory admissions policy based upon its interpretation of the Bible, accepting for the most part only Caucasian students. The IRS determined that Goldsboro was not an organization described in 501(c)(3), and hence was required to pay federal social security and unemployment taxes."³

Section 501(c)(3) of the Internal Revenue Code of 1954 (IRC) provides that "[c]orporations . . . organized and operated exclusively for religious, charitable . . . or educational purposes" are entitled to tax exemption.

Until 1970, the Internal Revenue Service (IRS) granted tax-exempt status under 501(c)(3) to private schools, independent of racial admissions policies, and granted charitable deductions for contributions to such schools under 170 of the IRC.

But in 1970, the IRS concluded that it could no longer justify allowing tax-exempt status under 501(c)(3) to private schools that practiced racial discrimination, and in 1971 issued Revenue Ruling 71-447 providing that a private school not having a racially nondiscriminatory policy as to students is not "charitable" within the common law concepts reflected in 170 and 501(c)(3). In No. 81-3, petitioner Bob Jones University, while permitting unmarried Negroes to enroll as students, denies admission to applicants engaged in an interracial marriage or known to advocate interracial marriage or dating. Because of this admissions policy, the IRS revoked the University's tax-exempt status. After paying a portion of the federal unemployment taxes for a certain taxable year, the University filed a refund action in Federal District Court, and the Government counterclaimed for unpaid taxes for that and other taxable years. Holding that the IRS exceeded its powers in revoking the University's tax-exempt status and violated the University's rights under the Religion Clauses of the First Amendment, the District Court ordered the IRS to refund the taxes paid and rejected the counterclaim. The Court of Appeals reversed. In No. 81-1, petitioner Goldsboro Christian Schools maintains a racially discriminatory admissions policy based upon its interpretation of the Bible, accepting for the most part only Caucasian students. The IRS determined that Goldsboro was not an organization described in 501(c)(3), and hence was required to pay federal social security and unemployment taxes. After paying a portion of such taxes for certain years, Goldsboro

³ No. 81-3 Argued October 12, 1982 Decided May 24, 1983 *461 U.S. 574 CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT Syllabus

filed a refund suit in Federal District Court, and the IRS counterclaimed for unpaid taxes.

The District Court entered summary judgment for [461 U.S. 575] the IRS, rejecting Goldsboro's claim to tax-exempt status under 501(c) (3) and also its claim that the denial of such status violated the Religion Clauses of the First Amendment. The Court of Appeals affirmed.

Held: Neither petitioner qualifies as a tax-exempt organization under 501(c)(3)

In behalf of CARE's members and the other Complainants who are Party to our Complaint, DOE 03-003-HQ, we respectfully suggest that you failed to consider that as a tax-exempt organization under 501(c)(3) of the Internal Revenue Code the California Independent System Operator Corporation (CAISO) is mandated to "having a racially nondiscriminatory policy" *in regards to Complainants right for a fair opportunity to vote for representation that understands Environmental Justice issues that affect this low-income community of color*"⁴ another words a right to vote for representation in the governance of the CAISO board of directors. Perhaps you failed to consider that the privilege granted in being a tax exempt corporate entity itself includes that it is mandated by the Internal Revenue Code to having a racially nondiscriminatory policy and that to qualify as a recipient of the CERTS program grant the CAISO needed to maintain its status as a tax-exempt organization under 501(c)(3) of the Internal Revenue Code. We contend in this case here since you made the finding that the "CAISO is a beneficiary of the federally funded CERTS program" with the CERTS program being a purported "educational research program" the DOE funded Consortium for Electric Reliability Technology Solutions (CERTS) makes the CAISO responsible to "having a racially nondiscriminatory policy" *in regards to Complainants right for a fair opportunity to vote for representation that understands Environmental Justice issues that affect this low-income community of color*" in order to maintain its tax exempt status under 501(c)(3) of the Internal Revenue Code. We respectfully request you reconsider any findings you might be making in this regards to CAISO receiving CERTS funds or other benefits until it provides the Department evidence of "having a racially nondiscriminatory policy" in

⁴ January 7th, 2005 response to CARE's June 21st, 2003 complaint at paragraph 2 page 5.

regards to its board of director's governance and any other policy such as its San Francisco Grid Planning Standards.

As an attorney are you not an officer of the court? It is apparent to us as electricity consumers that the CAISO is acting for the benefit of the sellers of energy and ancillary service in to markets operated by the CAISO not the end-user consumers and in this case this policy discriminates against CARE's members and the other Complainants who are Party to our Complaint, DOE 03-003-HQ, who are predominantly low income people of color. What amount of taxes would be attributable to the CAISO's multibillion dollar sales of energy during the California energy crises of 2000 and 2001 for example if they where determined by the IRS not to be a tax-exempt organization under 501(c)(3)?

Based on your January 7th, 2005 response to our Complaint you may have overlooked that our Complaint included not just the CAISO but the California Energy Commission (CEC) the City and County of San Francisco (CCSF) and Pacific Gas and Electric Corporation (PG&E). In pertinent part our June 21, 2003 complaint stated:

To the degree that PG&E⁵ is acting in concert with Cal ISO they are a Respondent Real Party in Interest as the closure of the PG&E Hunters Point power plant is the matter in dispute.

To the degree the California Energy Commission (CEC⁶), and/or the City and County of San Francisco (CCSF⁷), are or have acted in concert with Cal ISO in the siting of new generation they are also Parties to this complaint.

We respectfully request that you investigate these other entities with the same diligence provided in your investigation of the CAISO and look forward to your considered response.

⁵ Pacific Gas and Electric Company (PG&E) administers the federally funded Low Income Home Energy Assistance Program (LIHEAP) to its low-income customers.

⁶ The California Energy Commission's ongoing Public Interest Energy Research program (PIER) is a DOE funded research and educational program.

⁷ The City and County of San Francisco (CCSF) receives DOE funded Federal financial assistance through the US Government Service Administration's (GSA's) Federal Fleet program that uses DOE funds to pay for fuel efficient vehicles. Their website may be viewed which lists CCSF as one of the program's participants http://www.eere.energy.gov/vehiclesandfuels/epact/federal/afv_user/sanfrancisco.shtml.

We concede here however that we have held a “meet and confer” with representatives of Pacific Gas and Electric Corporation (PG&E) to settle our June 21, 2003 Complaint as to PG&E, and unlike the other Respondents to this Complaint PG&E has cooperated with CARE in our attempts to shut down their Bay View Hunters Point power plant to the best of their ability in return for CARE’s members’ support of their proposed PG&E owned transmission upgrades, by providing us support as formal intervenors in behalf of the Bay View Hunters Point community before the California Public Utilities Commission (CPUC). PG&E is on record committing to the shutdown of its Bay View Hunters Point power plant once the 230 KV Jefferson Martin transmission line is constructed⁸, along with the 115 KV Hunters Point to Potrero transmission upgrade⁹, both which are underground transmission lines. We have attached a copy of a January 12th, 2004 transcript¹⁰ to the evidentiary hearing on the 230 KV Jefferson Martin transmission line where PG&E’s witness states the construction of these two transmission upgrades will provide sufficient transmission capacity to meet the CAISO’s reliability requirements to enable the shutdown of their Bay View Hunters Point power plant.

The City and County of San Francisco (CCSF) and the California Energy Commission (CEC) have sought to site three of the four Combustion Turbines that CCSF received from the State of California as part of a settlement between the State and Williams Energy. CCSF has continued to pursue the siting of these turbines in the Bay View Hunters Point community along with the assistance of the CEC¹¹, who has agreed

⁸ Decision 04-08-046 August 19, 2004 Before the Public Utilities Commission of the State of California In the Matter of the Application of Pacific Gas and Electric Company (U 39 E) for a Certificate of Public Convenience and Necessity Authorizing the Construction of the Jefferson-Martin 230 kV Transmission Project. Application 02-09-043 (Filed September 30, 2002) (See Attachment for a copy of this Decision.) Opinion Granting a Certificate of Public Convenience and Necessity. Due to its length we shall submit Decision 04-08-046 in the electronic form only.

http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/39122.htm

⁹ Decision 04-12-020 December 2, 2004 Before the Public Utilities Commission of the State of California Application of Pacific Gas and Electric Company, a California corporation, for a Permit to Construct the Potrero to Hunters Point 115 kV Cable Project Pursuant to General Order 131-D.

http://www.cpuc.ca.gov/Published/Final_decision/41954.htm

¹⁰ Due to its length we shall submit the electronic form only.

¹¹ San Francisco Electric Reliability Project Power Plant Licensing Case Docket Number: 04-AFC-1 The San Francisco Electric Reliability Project will consist of a nominal 145-megawatt (MW) simple-cycle plant, using three natural gas-fired LM 6000 gas turbines and associated infrastructure. The original Application For Certification (AFC) applied for on March 18, 2004 identified the project site was to be

recently to keep the City's Application active even though they do not have site control to locate the three CTs. Williams Energy company is one of the many energy companies that overcharged California consumers estimated at two point four billion dollars in energy overcharges from power they sold through long term energy contracts to the California Department of Water Resources signed with Williams during the 2000 through 2001 energy crises, \$2,400,000,000 over the spot market price of \$30/MWh before the crises began. Respectfully we request you complete a thorough investigation of this matter since the CCSF power plant project is before the CEC who have already precommitted for this project's approval by deciding not to terminate their siting proceeding when the Applicant CCSF filed notice that it no longer had a project site for the three CTs.

In conclusion, in behalf of CARE's members and the other Complainants who are Party to our Complaint, DOE 03-003-HQ, we respectfully request that you reconsider any findings you might be making in this regards to CAISO receiving CERTS funds or other benefits until it provides the Department evidence of "having a racially nondiscriminatory policy" in regards to its board of director's governance and any other policy such as its San Francisco Grid Planning Standards as a tax-exempt organization under 501(c)(3) of the Internal Revenue Code. Furthermore, we respectfully request that you investigate the City and County of San Francisco (CCSF) and the California Energy Commission (CEC), and you examine their response in comparison to the response of Pacific Gas and Electric Corporation (PG&E) who has agreed to settle our June 21, 2003 Complaint, that you do so with the same diligence provided in your investigation of the CAISO, and we look forward to your considered response.

located adjacent to the San Francisco Bay in the Potrero District of San Francisco, within the existing site for the Potrero Power Plant (formerly owned by PG&E and now owned and operated by Mirant Potrero, LLC). See <http://www.energy.ca.gov/sitingcases/sanfrancisco/index.html>

Respectfully submitted,

Complainants:

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Verification

I am an officer of the Intervening Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 22nd day of February 2005, at Soquel, California.

Michael E. Boyd

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Certificate of Service

I hereby certify that I have this day served a copy of the foregoing document on all parties of record in the above captioned proceedings by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is unavailable.

Executed on this 22nd day of February 2005, at Soquel, California.

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San Francisco Electric Reliability Project
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